

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 17-00917

PRESENT: SMITH, J.P., CARNI, NEMOYER, AND WINSLOW, JJ.

ELIZABETH THORNTON, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

CITY OF ROCHESTER, DEFENDANT-APPELLANT.

BRIAN F. CURRAN, CORPORATION COUNSEL, ROCHESTER (SPENCER L. ASH OF COUNSEL), FOR DEFENDANT-APPELLANT.

KAMAN, BERLOVE, MARAFIOTI, JACOBSTEIN & GOLDMAN, LLP, ROCHESTER (RICHARD GLEN CURTIS OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Monroe County (William K. Taylor, J.), dated January 26, 2017. The order, among other things, denied defendant's motion to set aside the jury verdict.

It is hereby ORDERED that said appeal is unanimously dismissed without costs.

Memorandum: Defendant appeals from an order that, among other things, denied that part of its motion seeking to set aside the jury verdict and to direct judgment in its favor pursuant to CPLR 4404 (a). Inasmuch as the order is subsumed in the subsequently entered judgment, the appeal properly lies from the judgment (see CPLR 5501 [a] [1]; *Giorgione v Gibaud*, 147 AD3d 1448, 1448 [4th Dept 2017]), but no appeal was taken therefrom. Although we may exercise our discretion to treat the notice of appeal as valid and deem the appeal as one taken from the judgment instead of the order (see CPLR 5520 [c]; *Hughes v Nussbaumer, Clarke & Velzy*, 140 AD2d 988, 988 [4th Dept 1988]), we decline to do so here.

Entered: April 27, 2018

Mark W. Bennett
Clerk of the Court